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In re Application of :
Telfer :
Application No.: 10/510,016 : DECISION
PCT No.: PCT/GB03/01426 :
Int. Filing Date: 01 April 2003 : ON
Priority Date: 02 April 2002 :
Attorney Docket No.: 257.038 : PETITION
For: Junk Removal Tool :
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This is a decision on applicant's "Petition To Withdraw Holding Of Abandonment..." filed on 15 March 2007, and the correspondence filed on 06 March 2007 and 30 May 2007, which are being treated under 37 CFR 1.10(e).

BACKGROUND

This international application was filed on 01 April 2003, claimed a priority date of 02 April 2002, and designated the United States. The International Bureau transmitted a copy of the published international application to the USPTO on 09 October 2003. Consequently, the thirty month period for payment of the basic national fee in the United States expired as of midnight on 02 October 2004. Applicant filed *inter alia* the basic national fee on 30 September 2004.

On 10 February 2005, a Notification of Missing Requirements (Form PCT/DO/EO/905) was mailed to applicant, requiring the submission of an oath or declaration in compliance with 37 CFR 1.497(a) and (b) and a surcharge under 37 CFR 1.492(e) then in effect.

On 01 March 2007, a Notification of Abandonment (Form PCT/DO/EO/909) was mailed to applicant, indicating that this international application had become abandoned with respect to the national stage in the United States for failure to timely reply to the Notification of Missing Requirements (Form PCT/DO/EO/905) mailed on 10 February 2005.

On 13 March 2007, a Withdrawal of Previously Sent Notice was mailed to applicant, indicating that "The Notice of Abandonment mailed on 03/01/2007 was sent in error and is hereby withdrawn. A Filing Receipt is enclosed. The Office regrets any inconvenience the error may have caused." Also mailed was a Notice of Acceptance (Form PCT/DO/EO/903) reflecting a date under 35 U.S.C. 371(c)(1), (2) and (4) of "02/23/2005."

DISCUSSION

Petitioner requests withdrawal of the holding of abandonment on the basis that a response allegedly was filed via Express Mail on 23 February 2005. Petitioner's attention is respectfully directed to 37 CFR 1.10(e), which provides that

Any person mailing correspondence addressed as set out in §1.1(a) to the Office with sufficient postage utilizing the "Express Mail Post Office to Addressee" service of the USPS but not received by the Office, may petition the Director to consider such correspondence filed in the Office on the USPS deposit date, provided that:

- (1) The petition is filed promptly after the person becomes aware that the Office has no evidence of receipt of the correspondence;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail";

(3) The petition includes a copy of the originally deposited paper(s) or fee(s) that constitute the correspondence showing the number of the "Express Mail" mailing label thereon, a copy of any returned postcard receipt, a copy of the "Express Mail" mailing label showing the "date-in," a copy of any other official notation by the USPS relied upon to show the date of deposit, and, if the requested filing date is a date other than the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS, a showing pursuant to paragraph (d)(3) of this section that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day; and

(4) The petition includes a statement which establishes, to the satisfaction of the Director, the original deposit of the correspondence and that the copies of the correspondence, the copy of the "Express Mail" mailing label, the copy of any returned postcard receipt, and any official notation entered by the USPS are true copies of the originally mailed correspondence, original "Express Mail" mailing label, returned postcard receipt, and official notation entered by the USPS.

The instant petition complies with 37 CFR 1.10(e)(1).

Regarding 37 CFR 1.10(e)(2), petitioner has provided a copy of a "Certificate of Express Mail" itemizing the response allegedly filed on 23 February 2005 and bearing "Express Mail" mailing label no. EV494675005US. This satisfies requirement (2).

With regard to 37 CFR 1.10(e)(3), counsel has provided a satisfactory showing, including (in addition to the evidence discussed under requirement (2)) a copy of the "Customer Copy" of Express Mail mailing label EV494675005US bearing a "date-in" of "02 23 05" and a USPS plug stamp of "FEB 23 2005," as well as a print-out of the USPS "Track & Confirm" web page corresponding to EV494675005US and showing an acceptance date of 23 February 2005.

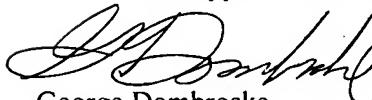
Concerning 37 CFR 1.10(e)(4), petitioner has provided a statement made on the basis of first-hand knowledge by Ms. Gloria Richard, attesting to the original mailing of the correspondence in question as "Express Mail." Petitioner states that the return postcard receipt was never received by counsel, and refers to the papers accompanying the petition as copies of the corresponding papers originally filed on 23 February 2005. In view of the totality of the evidence presented, it would be appropriate to consider the requirements of 37 CFR 1.10(e)(4) to have been satisfied.

The declaration document and transmittal letter (with fee authorization) filed on 15 March 2007 are being accepted as copies of those originally filed on 23 February 2005. The Notification of Abandonment (Form PCT/DO/EO/909) mailed on 01 March 2007 is hereby VACATED. The Notice of Acceptance (Form PCT/DO/EO/903) mailed on 13 March 2007 is hereby ratified.

CONCLUSION

The petition is GRANTED.

This application is being returned to Technology Center 3600 for further proceedings.



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